

October 31, 2014

Federal Trade Commission, Office of the Secretary  
Room H-113 (Annex X)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Submitted via: <https://ftcpublic.commentworks.com/ftc/bigdataworkshop>

Re: "Big Data: A Tool for Inclusion or Exclusion?" Workshop, Project No. P145406

Dear Secretary Clark:

The Interactive Advertising Bureau ("IAB") provides these comments following the Federal Trade Commission's ("FTC," or "Commission") public workshop held on September 15, 2014, entitled "Big Data: A Tool for Inclusion or Exclusion?" to explore the use of "big data" and its impact on American consumers, including low income and underserved consumers. The IAB is pleased to have the opportunity to add to the comments we filed in advance of the workshop<sup>i</sup>, and reiterate our position on a few select points.

Founded in 1996 and headquartered in New York City, the IAB ([www.iab.net](http://www.iab.net)) represents over 600 leading companies that actively engage in and support the sale of interactive advertising, including leading search engines and online publishers. Collectively, our members are responsible for selling over 86% of online advertising in the United States. The IAB educates policymakers, consumers, marketers, agencies, media companies and the wider business community about the value of interactive advertising.

Advertising and marketing uses of data, in particular, are hugely beneficial to consumers individually and to the economy and thriving American technology industry as a whole. The ad-supported Internet contributed over \$530 billion to the U.S. economy, and the ad-supported digital industry directly employs two million Americans, and indirectly another 3.1 million in other sectors, making it one of the most dynamic sectors of the U.S. economy.<sup>1</sup>

We appreciate the Commission's exploration of the juncture between big data and potential harms, especially in underserved communities. However, as the Commission has no doubt learned in its exploration of the "Internet of Things", big data encompasses an enormous universe. Echoing a point we made in a recently published editorial (included below), it is where there are actual harms – not theoretical or speculative harms – that the Commission can be the most effective in carrying out its mandate of protecting the American consumer.

To that end, the Commission's continued focus on advertising – a topic explored once again in the Workshop – does the Commission (and by extension the public) a disservice by diverting attention from where actual harms may be occurring. Continuing to explore a sector of the economy with robust self-regulation, or even its intersection with sectors with specific laws where unauthorized or inappropriate use of data could cause concrete harms to consumers, is counterproductive and unwarranted.

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<sup>1</sup> Professors John Deighton and Harold Brierley, Economic Value of the Advertising-Supported Internet Ecosystem (October 1, 2012), available at <http://www.iab.net/economicvalue>.

As the Commission contemplates its path forward, we continue to support the current and successful approach of addressing privacy questions through targeted legislation coupled with industry self-regulation. As always, we also offer our full support to work with the Commission if there should be tangible and quantifiable concerns. If you have any further questions, or would wish further clarification on any of our comments, please do not hesitate to contact me.

Respectfully submitted,

/Mike Zaneis/  
Mike Zaneis  
EVP, Public Policy & General Counsel  
Interactive Advertising Bureau

### **FTC blog crosses the line between regulation and advocacy (The Hill, 10/4/2014)**

A recent blog post published by the Federal Trade Commission raises questions about whether the agency can render unbiased decisions about one of the major industries it is charged with overseeing.

If it had been published by an advocacy group, the post – entitled “Online Ads Roll the Dice” – would have simply been the latest in an unending series of baseless, pseudo-scientific attacks on online advertising over imagined harms. But coming from the chief technologist of the advertising industry’s primary regulator and enforcement agency, the post takes on a far more coercive tone.

Relying on research conducted by members of an FTC summer fellowship program, the post poses a series of leading questions about whether online advertising practices somehow discriminate against Internet users on the basis of “race, color, religion, sex or national origin.” Putting aside the tortured logic that serves as the basis to attack the economic model that supports the creation of the very sites that they review, their greater missteps revolve around a fundamental lack of understanding of the medium and how consumers engage with it.

To support their suppositions, the FTC post leans heavily on a case study of a single Web site, operated by a traditionally African-American fraternity. It examines the types of ads served on the site, ranging from credit offers to vacations, and poses the question “could different groups of people, including ‘protected classes’ see entirely different ads?”

If that is indeed the question that the FTC is spending taxpayer money to resolve, it’s a few decades late. Different groups of people have been seeing different ads throughout the entire history of modern advertising. The point of advertising is to connect people to offers that might interest them. Reaching out to a receptive audience is usually a good place to start.

Internet advertising may have refined that dynamic, but it hasn’t changed it. Whether online or off, advertisers continue to devote a great deal of effort to ensuring that their ads reach the people most likely to find them relevant.

The notion that seeing or not seeing certain ads online creates a “disproportionate adverse impact” on Web site visitors is one that strains credulity. First of all, it makes the offensive assumption that members of specific racial, religious or social groups visit only one type of Web site, and see only one type of advertisement.

Secondly, it suggests that ads represent such a primary and irreplaceable source of information for Internet users that failing to see a specific ad can cause measurable harm.

The ad-supported Internet provides the most robust information sharing and gathering platform in history; one that is freely available to everyone. Applying the FTC blog’s example of credit card offers to this medium, it would seem to suggest that the only way people learn about credit card offers is by passively absorbing ads for them. The chief technologist’s infantilizing suggestion that “protected classes” are incapable of using the Internet to do further research before making a purchasing decision is one of the most bizarre aspects of the post.

Finally, their example attempts to cloud an otherwise well-established area of consumer protection law. When Congress passed the Equal Credit Opportunity Act (ECOA) it balanced the need of certain protected classes to receive credit offers, while ensuring those offers are not discriminatory. The law has long been interpreted not to apply to pre-application advertising (unless it rises to the level of impermissible “discouragement”). Congress, unlike the FTC post, identified concrete consumer harms and provided clear rules of the road.

What is truly concerning is the FTC’s offhand demonization of a major industry that it oversees. The equivocating tone of the post makes it difficult to understand what, if anything, they would like advertisers to change, but the implied threat of regulatory intervention couldn’t be more clear.

As an enforcement agency the FTC has the responsibility to draw clear lines, based on the law, and to ensure that regulated companies operate within those lines. The Chief Technologist closes her post with a hand-washing disclaimer: “This work does not attempt to show that a disproportionate adverse impact resulted, only that it could be occurring.” Unfortunately, the post shows neither of those things, and provides little of value to consumers or advertisers.

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<sup>i</sup> [http://www.ftc.gov/system/files/documents/public\\_comments/2014/08/00017-92372.pdf](http://www.ftc.gov/system/files/documents/public_comments/2014/08/00017-92372.pdf)